(3)

Supreme Court, U.S.
FILED
MAR 20 1992
OFFICE OF THE CLERK

No. 91-758

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

PONCIANO CRUZ RASA,
OSCAR CRUZ RASA,
LEO SABLAN PANGELINAN,
Petitioners,

VS.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONERS' REPLY TO UNITED STATES BRIEF IN OPPOSITION

ROBERT K. WREDE,
Counsel of Record
H. STUART WAXMAN
LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 N. Figueroa Street
Suite 1200
Los Angeles, California 90012
(213) 250-1800
HOWARD TRAPP
Howard Trapp Incorporated
200 Saylor Building
139 Chalan Santo Papa
Agana, Guam 96910
Attorneys for Petitioners Ponciano Cruz Rasa, Oscar Cruz Rasa, and Leo Sablan Pangelinan

Bowne of Los Angeles, Inc., Law Printers. (213) 627-2200.

TABLE OF CONTENTS

	Page
PREFATORY STATEMENT	1
QUESTION 1.	2
QUESTIONS 2. AND 3.	5
QUESTION 4.	8
CONCLUSION	11

TABLE OF AUTHORITIES

Cases

	Page
Sablan v. Inos, No. 91-18 (C.N.M.I. Dec. 26, 1991)	4
United States v. Briscoe, 428 F.2d 954 (8th Cir. 1970), *cert. den.* 400 U.S. 966 (1970)	3
United States v. Brooks, 697 F.2d 517 (3d Cir. 1982)	8
United States v. Caperell, 938 F.2d 975 (9th Cir. 1991)	3
United States v. Crane, 776 F.2d 600 (6th Cir. 1985)	7
United States v. Hutchings, 757 F.2d 11 (1985)	10
United States v. Jones, 524 F.2d 834 (D.C. Cir. 1975)	7
United States v. Medina-Cervantes, 690 F.2d 715 (1982)	10
United States v. Stockwell, 472 F.2d 1186 (9th Cir. 1973), *cert. den.*, 411 U.S. 948 (1973)	10

Rules

Federal Rules of Criminal Procedure	
Rule 11(a)(2)	2
Rule 12(b)(2)	2, 3

TABLE OF AUTHORITIES

Miscellaneous

	Page
"Hearing before the Subcommittee on Insular and International Affairs of the Committee on Interior and Insular Affairs, House of Representatives, One Hundred Second Congress, First Session, on H.R. 2575" San Francisco, June 17, 1991, #102-6	4
Lizabeth A. McKibben, "The Political Relationship Between the United States and Pacific Island Entities: The Path to Self-Government in the Northern Mariana Islands, Palau and Guam," 31 Harv. Int'l L.J. 257 (Winter, 1990)	4
Harry G. Prince, "The United States, the United Nations, and Micronesia; Questions of Procedure, Substance, and Faith," 11 Mich. J. Int'l Law 11 (Fall, 1989)	4
United States Sentencing Guidelines § 3E1.1	10

No. 91-758

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1991

PONCIANO CRUZ RASA,
OSCAR CRUZ RASA,
LEO SABLAN PANGELINAN,
Petitioners,

VS.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONERS' REPLY TO UNITED STATES BRIEF IN OPPOSITION

PREFATORY STATEMENT

In its Opposition Brief, the Government has restated — and significantly altered — the questions raised in our Petition. Whether by craft or simple inadvertence, the Government's restated questions differ markedly from those originally raised.

This Reply is filed solely to dispel any misconceptions which may have resulted from the Government's erroneous and misleading restatement of the questions actually presented by our Petition and to invite the Court's careful consideration of the real issues in this case.

In order to provide a ready reference to the questions actually presented, our discussion of each is preceded by a reiteration of those questions as they appear in the Petition.

QUESTION 1.

DID THE REFUSAL OF THE NINTH CIRCUIT TO CONSIDER WHETHER THE GOVERNMENT'S INDICTMENT CHARGED A LEGALLY COGNIZABLE OFFENSE AGAINST TWO OF THE PETITIONERS, BECAUSE THIS JURISDICTIONAL CHALLENGE WAS NOT EXPRESSLY PRESERVED IN THEIR FEDERAL RULE OF CRIMINAL PROCEDURE 11(A)(2) CONDITIONAL GUILTY PLEAS, SO FAR DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION?

As set forth with great particularity in the Petition, the Ninth Circuit *refused* to consider the merits of a jurisdictional attack on the indictment for failure to state a claim *solely* because the argument had not been expressly preserved in earlier conditional guilty pleas. (Petition, pp. 7, 14.)

Perhaps by design, perhaps by inadvertence, the Government's Brief in Opposition totally fails to address whether the Ninth Circuit's flat refusal to consider this jurisdictional challenge, raised for the first time on appeal, impermissibly violated both long-established precedent and the express provisions of Federal Rule of Criminal Procedure 12(b)(2) which hold that jurisdictional defects — including the sufficiency of an indictment — may be raised *at any time* during the pendency of the proceedings, even after a guilty plea has been entered.

United States v. Caperell, 938 F.2d 975 (9th Cir. 1991); *United States v. Briscoe*, 428 F.2d 954 (8th Cir. 1970), *cert. den.* 400 U.S. 966 (1970); Fed. R. Crim. P. 12(b)(2).

Indeed, rather than addressing this issue, the Government argues (in a footnote) that the Circuit's refusal to consider Petitioners' jurisdictional argument was somehow justified "because the indictment in fact charged an offense." (Opposition Brief, p. 5, N.1.)

This argument, of course, begs the question. The Government's *ipse dixit* that Petitioners will eventually lose on the merits is beside the point.

In the instant proceeding, Petitioners seek *thorough* briefing, argument, and judicial analysis of the merits of their jurisdictional argument. The Government, on the other hand, argues that it is alright that such briefing, argument, and analysis have not been provided because Petitioners are wrong and would ultimately lose, in any event. In support of this argument, the Government advances a cursory, woefully incomplete, and basically misleading three-page discussion of the highly complex and important question of the nature and scope of the interrelationship between the United States and the Commonwealth of the Northern Mariana Islands as proof-positive that if the Ninth Circuit, or this Court, were to grant full and fair consideration to this thorny and perplexing question (as Petitioners seek), the Government would undoubtedly prevail. Hence, the Government argument goes, there is no reason to provide such consideration.

Petitioners respectfully disagree.

Whether the question of how much federal intermeddling in Commonwealth affairs is enough is addressed in this case or another; before this Court, the Ninth Circuit, or the federal district court in Saipan, the question must

and eventually will be addressed. It is already being addressed both in the political arena[1] and in Commonwealth courts[2].

We have not, as the Government would have this Court believe, raised in the Petition the question of whether the federal legislation Petitioners were charged with violating is applicable within the Commonwealth. We have only asserted that this is a bona fide question which should be fully and fairly addressed because it has merit and because its answer will have ramifications far beyond the scope of this case.

---

[1]*See, e.g.*, "Hearing before the Subcommittee on Insular and International Affairs of the Committee on Interior and Insular Affairs, House of Representatives, One Hundred Second Congress, First Session, on H.R. 2575" San Francisco, June 17, 1991, #102-6; Lizabeth A. McKibben, "The Political Relationship Between the United States and Pacific Islands Entities: The Path to Self-Government in the Northern Mariana Islands, Palau, and Guam," 31 Harv. Int'l L.J. 257 (Winter, 1990). *See also*, Harry G. Prince, "The United States, the United Nations, and Micronesia: Questions of Procedure, Substance, and Faith," 11 Mich. J. Int'l Law 11 (Fall, 1989).

[2]*See, e.g., Sablan v. Inos*, No. 91-18 (C.N.M.I. Dec. 26, 1991) (order reversing dismissal), Appendix A hereto. In *Sablan*, the Supreme Court of the Commonwealth expressly held that the Covenant between the United States and the people of the Commonwealth "... retains in the people of the CNMI the sovereign right to self-government which they had prior to and at the time they entered into the Covenant." (*Sablan*, Appendix A-7.)

Wrote the Commonwealth Supreme Court:

> "We interpret the term 'self-government' as used in the Covenant, at a minimum, to mean that the people of the Northern Mariana Islands will *enact* the laws of the CNMI; that they will *interpret* the laws of the CNMI; and that they will *execute* the laws of the CNMI." (*Id.*, emphasis in original.)

A principal thrust of the Petition is that this perplexing question deserves to be raised and answered in the context of a full and fair appellate proceeding before this Court or, in the alternative, before the Ninth Circuit.

QUESTIONS 2. AND 3.

DID THE TRIAL COURT'S CONTINUANCE OF PETITIONERS' TRIAL WELL PAST THE DATE REQUIRED BY THE SPEEDY TRIAL ACT, SOLELY TO ACCOMMODATE THE PERSONAL "CONVENIENCE" OF ONE DEFENSE LAWYER AND THE TRIAL COURT, AND THE SANCTION OF THAT TRIAL-COURT CONDUCT BY THE COURT OF APPEALS, SO FAR DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION?

DOES AN APPARENT CONFLICT AMONG DECISIONS OF THE NINTH CIRCUIT, ITSELF, AND VARIOUS OTHER CIRCUITS WARRANT CONSIDERATION BY THIS COURT OF WHETHER A TRIAL COURT MAY RETROACTIVELY JUSTIFY GRANTING AN "ENDS OF JUSTICE" TRIAL CONTINUANCE WELL PAST THE DATE REQUIRED BY THE SPEEDY TRIAL ACT BASED UPON *POST HOC* CONSIDERATIONS OF THE FACTORS SPECIFIED IN THE ACT?

The Government's Opposition seeks to recast the two speedy trial questions posed by the Petition to exclude both consideration of the propriety of the trial court's attempt at *post hoc* justification and consideration of *the public's right* to speedy trials.

In their simplest form, the questions actually raised by the Petition are:

1. Whether setting a trial date *months* past the statutory deadline and *months* past the time when all counsel (Government and defense alike) were ready for trial, *solely* for the *personal convenience* of the trial judge and one of several defense lawyers, satisfies Constitutional and statutory speedy trial requirements; and

2. Whether *post hoc* consideration and recordation of the statutory factors mandated by the Speedy Trial Act are legally permissible.

The Government concedes (as it must) that its initial motion sought continuance of the trial "for a sufficient period to allow defense counsel and the Government a reasonable opportunity to prepare for trial" (Opposition Brief, p. 9); concedes (as it must) that counsel were prepared to go to trial on July 17 of 1989 (*Id.*, p. 10); concedes (as it must) that the trial court nevertheless continued the trial to a date almost five months after expiration of the statutory deadline and almost two months after *all* counsel agreed *on the record* they would be prepared to commence trial (Petition, Appendix E, p. 21a-24a); and concedes (as it must) that court congestion is *not* a permissible basis for such a continuance (Opposition Brief, p. 11).

What the Government argues in light of these unavoidable concessions is that the naked "unavailability of counsel" and "judicial unavailability" — *for whatever reason, no matter how trivial or avoidable* — is an appropriate basis for ignoring the Speedy Trial Act deadline. (Opposition Brief, p. 11.) This, we submit, is not (nor should it be) the law.

The Government chides Petitioners for failing to cite a case holding that "a judge's temporary absence from the jurisdiction cannot be grounds for a reasonable continuance" under the Act. The simple response to this criticism is that it is the Government's burden to bring defendants to timely trial and it is the Government's burden to justify its failure to do so. *United States v. Jones,* 524 F.2d 834, 849 (D.C. Cir. 1975). They have not done so.

Nor does the case the Government cites in support of its proposition that an unexplained judicial absence from the jurisdiction somehow justifies an ends-of-justice continuance stand for that proposition at all. In fact, it holds to the contrary:

> "The trial judge's unavailability was caused at least partially by his presiding over another case and was therefore attributable to 'general congestion of the court's calendar.' Thus, *the judge's absence is not a proper reason for an ends of justice continuance.*"

United States v. Crane, 776 F.2d 600, 605 (6th Cir. 1985, emphasis added.)

If a judge's absence in the pursuit of his judicial duties is insufficient to warrant an ends-of-justice continuance, as was the case in *Crane, a fortiori,* his absence — and the absence of defense counsel — *for their personal convenience* must be insufficient. The cases cited by the Government relating to judicial unavailability due to illness simply do not change this result.

The Government also seeks to make much of the acquiescence of defense counsel to the date ultimately set, although conceding (as it must) that Petitioners could not waive the speedy trial objection. (Opposition Brief, p. 12.) This inability of the defendants alone to waive the right, of course, reflects the strong *public interest* in

speedy trials reflected in the Speedy Trial Act, a factor the Government fails to mention. *See, United States v. Brooks*, 697 F.2d 517, 520 (3d Cir. 1982).

Notwithstanding the Government's attempt to recast the speedy trial issue, it simply cannot be denied that the continuance was granted *before* the trial court considered the factors required by the Act and that its inordinate length was predicated on nothing more than the *personal convenience* of the trial judge and one of the defense counsel.

Permitting such conduct, Petitioners have already asserted, would make a mockery of the Constitutional and statutory guarantees of a speedy trial.

QUESTION 4.

DID THE IMPOSITION BY THE TRIAL COURT OF A DISPROPORTIONATELY HEAVY SENTENCE ON ONE OF THE THREE PETITIONERS BECAUSE HE EXERCISED HIS RIGHT TO A JURY TRIAL AND CONSEQUENTLY DID NOT "COOPERATE" WITH THE PROSECUTION, AND THE RELUCTANT SANCTION OF THAT TRIAL-COURT'S CONDUCT BY THE COURT OF APPEALS, SO FAR DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION?

As with the first two issues, the Government disingenuously seeks to restate the third major question raised by our Petition in terms of the *leniency* purportedly shown in sentencing two "cooperative" co-defendants rather than in the stated terms of the *disproportionately heavy sentence* imposed on the third defendant, PANGELINAN,

for choosing to go to trial and not "cooperate" with the prosecution.

The fact is, however, that the record is devoid of evidence that leniency to the cooperative co-defendants was the reason for the disproportionate sentences. Rather, the record clearly shows that, by imposing a significantly longer sentence on the defendant who chose to go to trial, the sentencing judge intended to send a message "out to the community" that defendants who choose to exercise their Constitutional right to a jury trial, but who do not prevail, do so at the risk of receiving a disproportionately harsh sentence (in this case imprisonment some 66% longer than his "cooperative" co-defendants). (Petition, Appendix D, p. 12a.)

The clear meaning of the sentencing judge's candidly stated reasons for this different sentence (Petition, Appendix D, p. 12a) cannot be erased by his subsequent, and clearly inconsistent, denial that the lengthy sentence was intended as a punishment for "using his constitutional right of going to trial." (Petition, Appendix D, p. 14a) Even accepting this *pro forma* disclaimer as candid and true, the judge did not attempt to ameliorate, or even address, his criticism of PANGELINAN for "not cooperating" with the prosecution.[3]

While the Government argues that the disparity in sentences actually reflects *lenience* in sentencing PANGELINAN's co-defendants because they were cooperative (rather than *severity* with PANGELINAN for his lack of cooperativeness), the Government *does not, and*

---

[3]The Ninth Circuit disapproved of the judge's initial candor, it will be recalled, finding his "... comments ... troublesome [making] this a very close issue on appeal." (Petition, Appendix A, p. 5a, N.2.)

cannot, point to anything in the record to support its argument that the clearly disparate sentences "reflected a credit to [PANGELINAN's] co-defendants for cooperating with the Government by pleading guilty." (Opposition Brief, p. 14.)

What the record does make absolutely clear is that the severity of PANGELINAN's sentence *was not*, as the law requires, *based "solely upon the facts of his case and his personal history . . ." United States v. Stockwell*, 472 F.2d 1186, 1188 (9th Cir. 1973), *cert. den.*, 411 U.S. 948 (1973) (emphasis added).[4]

Nor does the Government support its *ipse dixit* that the authorities cited in our Petition are not helpful. (Opposition, p. 14, N.10.) In fact, each of those cases holds that *it is improper* for a judge to consider a defendant's exercise of his constitutional right to a jury trial in imposing sentence. *United States v. Hutchings*, 757 F.2d 11, 14 (1985); *United States v. Medina-Cervantes*, 690 F.2d 715 (1982); and *United States v. Stockwell*, 472 F.2d 1186 (1973).

---

[4]The Government clearly concedes (as it must) that punishing a defendant for going to trial is improper. In support of the distinction it seeks to draw between the sentencing judge's imagined leniency to PANGELINAN's cooperative co-defendants and his punishment of PANGELINAN, the Government cites United States Sentencing Guideline § 3E1.1.

Section 3E1.1 was not in effect at the time of Pangelinan's sentencing. Further, even though § 3E1.1 recommends reduced sentences to those who accept responsibility for their criminal conduct, it does not sanction punishing a defendant for exercising his constitutional right to a jury trial. Actually, this guideline is applicable "without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or jury . . . " U.S.S.G. 3E1.1(b).

CONCLUSION

For the reasons set forth in our Petition, and above, we respectfully request that the Petition be granted.

Respectfully submitted,

HOWARD TRAPP
HOWARD TRAPP INCORPORATED

ROBERT K. WREDE
H. STUART WAXMAN
LEWIS, D'AMATO, BRISBOIS
& BISGAARD
Attorneys for Petitioners,
Ponciano Cruz Rasa,
Oscar Cruz Rasa and
Leo Sablan Pangelinan

IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

HERMAN S. SABLAN and ANTONIO T. SALAS,
Plaintiffs/Appellants,

vs.

ELOY INOS, Director of Finance; CNMI Department of Finance; Division of Revenue and Tax; Commonwealth Government, LORENZO I. GUERRERO, Governor of the CNMI,
Defendants/Appellees.

APPEAL NO. 91-018
CIVIL ACTION NO. 91-734
Filed: December 26, 1991

ORDER

Argued and Submitted December 23, 1991

Counsel for Plaintiffs/ Appellants:	Robert J. O'Connor P.O. Box 1969 Saipan, MP 96950
Counsel for Defendants/ Appellees:	Eric Smith Assistant Attorney General Attorney General's Office 2d Administration Building Saipan, MP 96950

BEFORE: VILLAGOMEZ and BORJA, Justices, and HILLBLOM, Special Judge.

VILLAGOMEZ, Justice:

I.

On August 19, 1991, we issued a temporary injunction and ordered the Superior Court to take custody and constructive possession of all income tax documents and information without taking actual possession thereof. The temporary injunction is still in effect. In December, 1991, the Inspector General of the Department of the Interior subpoenaed the Governor of the Commonwealth of the Northern Mariana Islands ("CNMI") to produce all documents related to tax returns and information filed with the Department of Finance.

As a result of the subpoena, the parties requested that we expedite oral argument on this appeal or to decide the matter without oral argument. We decided to hear oral argument on December 23, 1991. At oral argument both parties pressed for an expedited decision on this matter.

In view of the exigency, we have decided to issue an order at this time, to be followed by an opinion setting forth our analysis and reasoning. Our expedited decision herein is based on the briefs, arguments of counsel, and review of relevant legal documents.

II.

This is an appeal (from the dismissal of an action) by two Commonwealth taxpayers who sought to enjoin the Director of Finance from disclosing their confidential[1]

---

[1] 4 CMC § 1701. *Application of the Internal Revenue Code, in General.*

• • •

(d) *Confidentiality, Disclosure, and Coordination.*

(1) Returns and return information shall be confidential, and except as authorized by NMTIT Section 6103, no officer or em-

tax documents and related information to the Inspector General after the Inspector General informed (by letters) the CNMI Governor of its intent to audit the CNMI's accounts and to review all documents related to individual tax returns.[2]

The trial court determined that the Inspector General is an indispensable party[3] in this case. When the plaintiffs did not include the Inspector General as a party, it dismissed the action pursuant to Rule 19, Com.R.Civ.P.

Plaintiffs contend that the trial court erred as a matter of law, arguing (1) that the Inspector General is not an indispensable party and the trial court misinterpreted Rule 19, (2) the trial court should have issued an injunction and taken custody and constructive possession of the tax returns, and (3) an application of 48 U.S.C. § 16991(b) that would require the CNMI to disclose confidential tax returns to the Inspector General would violate the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant"). Comm. Code B-101.

---

ployee of the Commonwealth shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or employee or otherwise. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

[2]The Inspector General did not inform the individual taxpayers of his intent to review their tax returns. Nor did he serve them with the subpoena.

[3]The Inspector General did not attempt to intervene in the trial court or appear as an amicus in this appeal. It has been aware of the complaint filed on July 9, 1991, and the appeal filed on August 20, 1991.

Defendants oppose any issuance of an injunction on the basis that the CNMI Government does not intend to disclose, or release to the Inspector General, the tax return information.

III.

The issues raised on appeal are:

1. Whether the Superior Court erred in concluding that the Inspector General is an indispensable party.

2. Whether the Superior Court should have prohibited the CNMI from disclosing tax returns and return information to the Inspector General.

3. Whether the Superior Court should have taken custody and constructive possession of the tax return information.[4]

IV.

It is our opinion that the Inspector General is not an indispensable party in this case. 48 U.S.C. § 1691(b) authorizes the Inspector General to audit the "accounts" of the CNMI. The information contained in the tax returns of the plaintiffs are properties of the taxpayers and are not "accounts" of the CNMI. The tax returns filed with the Commonwealth Government are confidential documents pursuant to 4 CMC § 1701(d)(1).

The taxpayers have the right to privacy under § 10, Article I, CNMI Constitution. Since the information contained in the tax returns are the properties of the taxpayers, only the taxpayers have the right to authorize the

---

[4]Because of our ruling on the other issues, this issue need not be addressed.

release of such information. Any release of the information, without such authorization, to any person not authorized by local law, or any U.S. law made applicable in the CNMI through the Covenant, would violate the taxpayer's right to privacy, the confidentiality of the information, and the right to self-government.[5]

V.

The Superior Court should have prohibited the CNMI from disclosing tax returns and return information to the Inspector General.

Whether the CNMI may disclose to the Inspector General the confidential tax returns and return information depends upon whether 48 U.S.C. § 1681(b) applies in the CNMI.

The applicability of 48 U.S.C. § 1681(b) to tax returns in the CNMI depends upon whether it is authorized by the Covenant and does not violate the fundamental provisions of the Covenant. If the Covenant does not authorize its applicability or if it contradicts any fundamental provision of the Covenant (such as §§ 101 and 103), then it is void as to its applicability in the CNMI. See Analysis of the Covenant, 19 (1975).

The Covenant is an agreement entered into between the United States Government and the Government/people of the Northern Mariana Islands. They entered into the agreement as two separate, but equal sovereign entities.[6]

---

[5]Applicability of U.S. laws in the CNMI and the right to self-government are further discussed below.

[6]". . . the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern

The Covenant governs the relationship between the two parties.[7]

The expressed purpose of the Covenant is "to establish a self-governing commonwealth for the Northern Mariana Islands . . . and to define the future relationship between the Northern Mariana Islands and the United States." Preamble to the Covenant.

The Covenant is an agreement approved by the United States through a joint resolution which states:

> Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, that the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

House Joint Resolution 549 (1975).

The Covenant, as an agreement, may be amended or terminated only by agreement of the parties thereto, or as provided for in the Covenant, but not by the unilateral action of any one party. Covenant, § 105.

Mariana Islands the right freely to express their wishes for self-government or independence." Preamble to the Covenant. The Preamble further states "This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a *sovereign* act of self-determination." (Emphasis added) *See also, Wabol v. Villacrusis*, No. 89-05, 1 N.Mar.I. 19 (1989).

[7] "The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands." Covenant, Art. I, § 102.

Article I, Section 103 of the Covenant provides that the people of the Northern Mariana Islands will have the right of local self-government. This provision retains in the people of the CNMI the sovereign right to self-government which they had prior to and at the time they entered into the Covenant. This section cannot be unilaterally amended by either party to the Covenant.[8]

We interpret the term "self-government" as used in the Covenant, at a minimum, to mean that the people of the Northern Mariana Islands will *enact* the laws of the CNMI; that they will *interpret* the laws of the CNMI; and that they will *execute* the laws of the CNMI.

The CNMI's right to self-government is with respect to internal affairs[9] (Covenant, § 103), as opposed to foreign affairs and defense (Covenant, § 104).

At the same time, the CNMI has agreed to relinquish its right of self-government and to apply U.S. laws in certain matters.

Article V of the Covenant sets forth certain provisions of the U.S. Constitution and laws which would apply or would be incorporated by reference in the CNMI in contradiction to the principle of self-government. Section 105 of the Covenant specifically authorizes the United States to enact laws applicable in the CNMI provided that

---

[8]Article I, Section 105 of the Covenant provides:

> . . . Articles I, II and III and Sections 501 and 850, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

[9]The tax laws of the CNMI, the manner in which the CNMI collects taxes, the tax returns filed with the government, and all related information are matters of internal affairs, not related to foreign affairs or defense. In the exercise of self-government, the CNMI may enact, interpret, and execute laws related to local taxation.

such laws do not contradict Articles I, II, or III of the Covenant.

It is our opinion that 48 U.S.C. § 1681(b) is not made applicable in the CNMI by the Covenant because it contradicts Section 103 thereof. Therefore, it is void and has no force and effect in the CNMI.[10]

The dismissal of this action by the Superior Court will be REVERSED. This case, upon issuance of our opinion, will be REMANDED for the trial court to determine if it should issue a permanent injunction and whether it should relinquish custody and constructive possession of the tax returns and return information. The temporary injunction we ordered shall continue in effect until disposition of this case.

Dated this 26th day of December, 1991.

RAMON G. VILLAGOMEZ
Associate Justice

JESUS C. BORJA
Associate Justice

LARRY L. HILLBLOM
Special Judge

---

[10]"Thus any attempt by the United States or the Northern Marianas to circumvent the fundamental aspects of the Covenant would be void and of no effect." Analysis of the Covenant 19 (1975).